

TITLE 12 ADULT BUSINESS REGULATIONS

Chapter 1 MASSAGE ESTABLISHMENTS

12-1-1. Definitions.

For the purposes of this chapter, the following words shall have the meanings as set forth herein:

- (a) The word "massage" or "massage therapy" means a manual or mechanical manipulation of the parts of the body by rubbing, kneading, slapping or the like, so as to promote circulation, to relax the muscles as in deep muscle therapy, to tone up the general system, promote general health and relieve certain conditions that respond to massage or massage therapy allowed by the State of Utah to be practiced without prescription from a licensed physician.
- (b) A "masseur" is any person not otherwise duly licensed by the Department of Registration of the State of Utah to practice those treatments referred to above, who engages in, conducts, or carries on the giving of massage or massage therapy to another person for a fee.
- (c) A "massage establishment" is a public or private establishment where licensed masseurs are hired, individually, or act as an association, firm or corporation which engage in, conduct, carry on, or permit to be carried on, any business of the giving of a massage or massage therapy.
- (d) The words "apprentice massage therapist" or "apprentice masseur" shall mean an individual taking training from a licensed, accredited massage therapist, under approved conditions, as supervised by the provisions of the State of Utah and/or the American Massage Therapy Association, or a student taking an approved massage course of training at an accredited school and working for and with an accredited licensed or registered massage therapist or masseur.
- (e) The words "master massage therapist" or "a master masseur" means a registered massage therapist, licensed under the terms of this ordinance as such or licensed under the laws of the State of Utah, if applicable, who has shown proof of three (3) years of successful massage therapy experience and who is the proprietor,

manager or supervisor or person in complete control of any massage establishment. This term designates the person in complete charge of all operations and as such is completely responsible for the acts, deportment and professional conduct of the establishment and all persons in or employed by the massage establishment. As such, any master massage therapist or master masseur shall insure that each person employed under the provisions of this chapter shall first have obtained a valid license.

12-1-2. License Required.

It shall be unlawful for any person to operate, conduct, or maintain a massage establishment or engage in the business of a masseur in Sandy City without first obtaining a business license to do so.

12-1-3. License Fee.

The license fee for a massage establishment or for conducting the business of a masseur shall be established by resolution of the City Council. Such fees shall be computed upon and paid for a period of one year and shall be administered and collected in accordance with regulations as established by the Sandy City Business License Division.

12-1-4. Subsidiary Use.

No massage establishment shall be maintained within the limits of Sandy City as an independent business establishment, but any such massage establishment shall only be maintained and a license issued therefor as a use for business subsidiary to and in conjunction with a recreational, health, spa or exercise facility which has previously received approval as to its conformance with the zoning, business and other regulatory ordinances of the City. No massage parlor shall occupy, in the capacity of a subsidiary use, more than ten (10) percent of the net usable floor space of the recreational, health, spa or exercise facility in which the massage establishment is so located.

12-1-5. License Application.

Every person desiring to be licensed as a masseur, apprentice masseur, master masseur or to obtain a massage parlor license shall apply to the Sandy City License Division and shall file with said application the following:

- (a) A statement under oath that the applicant is at least 18 years of age;
- (b) The applicant's full name and present and complete address, with dates of residence;
- (c) Two previous addresses of the applicant immediately prior to and within ten (10) years of, the present address as set forth above, with length of time and dates of residence at each;
- (d) Two previous business addresses of the applicant immediately prior to, and within

ten (10) years of, the present business address as set forth upon the application, with length of time and dates of business practice at each such address.

- (e) A statement showing the street, building and location of the place where the applicant proposes to conduct, operate, or maintain such massage establishment or engage in the pursuits of a masseur;
- (f) A satisfactory statement that the applicant:
 - (1) Has practiced massage therapy as a licensed massage therapist for at least three (3) years prior to this act, and has a license or American Massage Therapy Association certification as proof thereof; or
 - (2) Has graduated from an approved massage therapy school with a diploma therefor, which diploma must be presented with the application and shall include copies of credentials issued therewith; or
 - (3) Is a fully accredited member of the American Massage Association; or
 - (4) Has had 1,000 hours of acceptable training, either in school or as an apprentice under a licensed massage therapist and has been engaged in practice at least five (5) years as a full time massage therapist; or
 - (5) Is a student now in school or is applying as an apprentice massage therapist or apprentice masseur in capacity of a full apprenticeship under a full and approved qualified massage therapist or licensed masseur and such applicant shall be granted an apprentice's license upon presentation of a statement from the school which the student is attending or a statement from the person acting as preceptor.
- (g) Five letters from responsible persons confirming the integrity and moral character of the applicant; and
- (h) A complete list of all convictions, if any there be, of any crime or type which involve moral turpitude, malpractice or other offenses against the public health, safety and welfare; and
- (i) Such other information as the City may require in order to investigate the information as set forth by the applicant.

12-1-6. Investigation of Applicants.

Applicants for licensing as a massage establishment as a masseur of any of the categories heretofore set forth shall be referred to the Chief of Police, the Fire Chief, the Zoning Department and the Salt Lake City/County Board of Health and such other City departments as may be necessary for investigation and recommendation. The Police Department shall make findings and recommendations with regard to the moral character of the applicant as determined by investigation of the letters of reference and criminal convictions, if any of the applicant. The Salt Lake City/County Board of Health shall make findings and recommendations with regard to

the sanitary conditions of the premises to be licensed in view of the then applicable laws and ordinances governing health and sanitation. The other departments of the City shall review the application and the premises to be licensed to determine conformance with the laws, ordinances, and regulations of the City as administered by the several investigating departments. All recommendations and findings of the departments requested to make such review shall then be delivered to the license division which shall take such action upon the license application as shall be appropriate.

12-1-7. Unlawful Conduct.

No sexual acts as prohibited by the laws of the State of Utah or the ordinances of Sandy City or any other immoral or unlawful act shall be performed by masseurs, massage establishment licensees or their employees. No massage shall be given in a locked room or enclosure. No cubicle, room or enclosure of a permanent nature shall be allowed within a massage establishment. Privacy curtains shall be permitted.

12-1-8. Health Standards.

When the Salt Lake City/County Board of Health has probable cause to believe that the examination of a masseur for communicable diseases is necessary for the health and safety of the masseur or the public, it may require a masseur to submit to a physical examination of a type to be determined by the Board of Health. All massage establishments must at all times meet the Salt Lake City/County Board of Health regulations.

12-1-9. Issuance of License.

Upon receipt of the reports and recommendations as prepared and required herein, the Business License Division shall refer such application to the Mayor. The Mayor shall, upon receipt of such application, reports and recommendations, determine whether or not a business license shall be issued to the applicant. Such determination shall be based upon the ordinances of Sandy City and the consideration of reports and recommendations as received.

12-1-10. Display of License.

Every massage establishment licensed under this chapter shall display, and every masseur licensed under this chapter shall display, its or his massage establishment license or masseur's license in a conspicuous place on the licensed premises together with a notice listing all persons employed on the premises.

12-1-11. Supervision of Massage Establishment.

Any establishment or person licensed under the provisions of this ordinance shall be supervised by a master massage therapist or master masseur, as herein defined. Such master massage therapist shall be required to conform to the standards of training and experience as outlined in the definitions herein and shall be responsible to assure that the licensed establishment conforms and continues to conform with the laws, ordinances and regulations of the City and the State of Utah. No massage establishment or masseur shall be licensed under the

provisions of this chapter unless the requirements regarding a master massage therapist or masseur shall have been fulfilled.

12-1-12. Revocation of License.

Any license issued under the provisions of this chapter may be revoked or suspended for the following reasons:

- (a) Upon a showing that a licensed massage establishment or masseur is not in compliance with the laws and ordinances of the City or State of Utah; or
- (b) Upon a showing that the licensed massage establishment or masseur has failed to maintain the premises upon which the business is operated in a condition of proper sanitation or hygiene; or
- (c) Upon a showing that the licensed massage establishment or masseur has submitted to the City falsified documents of application or an application containing a deliberate omission of pertinent facts or containing deliberate misrepresentation of such facts; or
- (d) Upon a finding that any licensed massage establishment is being operated or maintained or that any person is engaged in the pursuits of a masseur in violation of any law, ordinance or regulation.

The revocation or suspension of any license granted hereunder shall not be undertaken until a hearing and appeals therefrom shall have been conducted by and before the Mayor in conformance with the provisions contained elsewhere in these ordinances with regard to revocation or suspension of business licenses generally.

12-1-13. Renewal of Licenses.

Licenses issued under this chapter shall be valid, unless expired, revoked or suspended, for the current calendar year in which issued and shall expire on December 31st of each year. Renewal of any license issued hereunder shall be granted in the manner and upon the conditions for the renewal of business licenses generally.

12-1-14. Treatment of Persons of the Opposite Sex.

It shall be unlawful for any person to administer, for hire or reward to any person of the opposite sex, any massage, nor shall any person cause or permit in or about his place of business or in connection with his business, any agent, employee or servant or any other person to administer any massage to any person of the opposite sex.

This section shall not apply to any massage or treatment administered in good faith in the course of the practice of any healing art by any person licensed to practice any such art or profession under the provisions of the Utah Code Annotated, 1953, or of any other law of this state.

12-1-15. Modeling Prohibited.

No massage establishment or licensee shall allow masseurs or masseuses working in his establishment to model or pose for photographs, films, television, moving pictures, or drawings on the premises.

12-1-16. Appointment of Inspectors for the Purpose of Enforcement of this Chapter.

The departments of Fire, Health, Community Development, Police and Building and Safety shall designate members of their departments to act as inspectors of establishments required to be licensed by this chapter. Said establishments shall be open to inspection at reasonable times to the inspectors of each of the above departments for the purpose of investigation and enforcement of the applicable ordinances of Sandy City and the laws of the State of Utah.

12-1-17. Conformance to State Laws.

The operation of any massage establishment or the ability of any massage therapist or masseur to engage in such business within the limits of the City shall be governed by all applicable statutes, laws and regulations of a general nature which may be adopted or promulgated from time to time by the State of Utah and Salt Lake County.

12-1-18. Severability Clause.

If any part of this section or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this law or the application thereof to other persons and circumstances, but shall be confined in its operation to the section, subdivision, sentence or part of the section and the persons and the circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of the section or application had not been included.

12-1-19. Penalty.

Any violation of the provisions of this chapter shall be deemed a class B misdemeanor.

Chapter 2 SEXUALLY ORIENTED BUSINESS AND EMPLOYEE LICENSING ORDINANCE

AMENDED 4/16/91, PUBLISHED May 2, 1991.

12-2-1. Title.

This ordinance shall be known and may be referred to as the Sexually Oriented Business and Employee Licensing Ordinance.

12-2-2. Purpose.

It is the purpose and object of this ordinance that the City establish reasonable and uniform regulations governing the time, place and manner of operations of Sexually Oriented Businesses and their employees in Sandy City. This ordinance shall be construed to protect the governmental interests recognized by this ordinance in a manner consistent with constitutional protections provided by the United States and Utah Constitutions.

12-2-3. General applicability.

This ordinance imposes regulatory standards and license requirements on certain business activities, which are characterized as "Sexually Oriented Businesses" and certain employees of those businesses characterized as "Sexually Oriented Business Employees". Except where the context or specific provisions require, this ordinance does not supersede or nullify any other related ordinances, including, but not limited to, Chapter 12-1 Massage Establishments and Chapter 12-3 Pornography and Obscenity.

12-2-4. Obscenity.

Notwithstanding anything contained in this ordinance nothing herein shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of Chapters 12-3 or 5-2 of the Revised Ordinances of Sandy City or other applicable federal or state statutes prohibiting obscenity.

12-2-5. Definitions.

For the purpose of this ordinance the following words shall have the following meanings:

- (a) "Adult Business" shall mean an Adult Motion Picture Theater, Adult Bookstore or Adult Video store.
- (b) "Adult Bookstore" or "Adult Video Store" means a commercial establishment which:
 - (1) Holds itself out to be such a business, or
 - (2) Excludes minors from more than fifteen (15%) percent of the retail floor or

shelf space of the premises, or

- (3) Which as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations the central theme of which depicts or describes specified sexual activities or specified anatomical areas, or instruments, devices or paraphernalia which are designated for use in connection with specified sexual activities, except for legitimate medically recognized contraceptives.
- (c) "Adult Motion Picture Theater" means a commercial establishment which:
- (1) Excludes minors from the showing of two consecutive exhibitions; repeated showings of any single presentation shall not be considered a consecutive exhibition; or
 - (2) As its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (d) "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which:
- (1) Holds itself out as such a business; or
 - (2) Excludes minors from the showing of two consecutive exhibitions; repeated performances of the same presentation shall not be considered a consecutive exhibition; or
 - (3) As its principal business, features persons who appear in live performance in a state of nudity or which are characterized by the exposure of specified anatomical areas, or by specified sexual activities.
- (e) "Business License Authority" shall mean the City's Business License Officer or designee.
- (f) "Employ" shall mean hiring an individual to work for pecuniary or any other form of compensation whether such person is hired on the payroll of the employer, as an independent contractor, as an agent or in any other form of employment relationship.
- (g) "Escort" shall mean any person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies or offers to date, consort, socialize, visit or accompany another or others to or about social affairs, entertainment or places of amusement or within any place of public or private resort or any business or commercial establishment or any private quarters.

"Escort" shall not be construed to include persons who provide business or personal services such as licensed private nurses, aides for the elderly or handicapped, social secretaries or similar service personnel (1) whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve (12) hours or (2) who provide a service not principally characterized as dating or socializing. "Escort" shall also not be construed to include persons providing services such as singing telegrams, birthday greetings or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of a duration of not longer than one (1) hour.

- (h) "Escort service" shall mean an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.
- (i) "Escort service runner" shall mean any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or patron by contacting or meeting with escort services, escorts or patrons at any location within Sandy City, whether or not said third person is employed by such escort service, escort, patron, or by another business or is an independent contractor or self-employed.
- (j) "Nude Entertainment Business" shall mean a business, including Adult Theater, where employees perform or appear in the presence of patrons of the business premises in a state of nudity. A business shall also be presumed to be a "Nude Entertainment Business" if the business holds itself out as such a business.
- (k) "Nude and semi-nude dancing agency" shall mean any person, agency, firm, corporation, partnership or any other entity or individual which furnishes, books, or otherwise engages or offers to furnish, book or otherwise engage the service of a professional dancer licensed pursuant to this ordinance for performance or appearance at a business licensed for Nude Entertainment or Adult Theaters.
- (l) "Nudity" or "**state of nudity**" means:
 - (1) The appearance of a human anus, male genitals, female genitals, or female nipple or areola;
 - (2) A state of dress which fails to opaquely cover an anus, male genitals, female genitals, nipple or areola of the female breast.
- (m) "Out-Call Services" shall mean services of a type performed by a Sexually Oriented Business employee outside of the premises of the licensed Sexually Oriented Business in any place of private resort or private quarters including but not limited to escorts, models, dancers and other similar employees regardless of the employee's state of dress.
- (n) "Patron" means any person who contracts with or employs any escort services or

escort or the customer of any business licensed pursuant to this ordinance.

- (o) "Pecuniary compensation" means any commission, fee, salary, tip, gratuity, hire, profit, reward or any other form of consideration.
- (p) "Person" shall mean any person unincorporated association, corporation, partnership or other legal entity.
- (q) "Semi-nude" means a state of dress in which a person wears opaque clothing covering (1) only the male or female genitals, pubic region, anus, or (2) the nipple and areola of the female breast, by an opaque cover that is four inches wide in the front and five inches wide in the back tapering to one inch at the narrowest point. A person wearing clothing covering less than (1) the male or female genitals, public region, anus or (2) the nipple and areola of the female breast by an opaque cover that is four inches wide in the front and five inches wide in the back tapering to one inch at the narrowest point shall be considered to be nude for the purposes of this ordinance.
- (r) "Sexually Oriented Business" shall mean Nude Entertainment Businesses, Sexually Oriented Out-Call Services, Adult Businesses, and Nude and Semi-Nude Dancing Agencies as defined by this ordinance.
- (s) "Sexually Oriented Business Employees" shall mean those employees who work on the premises of adult businesses, nude entertainment businesses, out-call services, or nude or semi-nude dancing agencies in activities related to the sexually oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees of adult businesses, nude entertainment businesses, out-call services, or nude or semi-nude dancing agencies whether or not hired as employees, agents or as independent contractors. Sexually oriented business employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business such as, janitors, bookkeepers and similar employees. "Sexually Oriented Business Employees" shall not include cooks, serving persons, bartenders and similar employees, except where they may be managers or supervisors of the business. All persons making out-call meetings under this ordinance, including escorts, models, dancers, guards, escort runners, drivers, chauffeurs and other similar employees regardless of the person's state of dress shall be considered "Sexually Oriented Business Employees".
- (t) "Specified Anatomical Areas" shall mean the human male or female pubic area or anus with less than a full opaque covering, or the human female breast from the beginning of the areola, papilla or nipple to the end thereof with less than full opaque covering.
- (u) "Specified Sexual Activities" means:
 - (1) Acts of:

- (A) Masturbation;
 - (B) Human sexual intercourse;
 - (C) Sexual copulation between a person and a beast;
 - (D) Fellatio;
 - (E) Cunnilingus;
 - (F) Bestiality;
 - (G) Pederasty;
 - (H) Buggery; or
 - (I) Any anal copulation between a human male and another human male, human female, or beast.
- (2) Manipulating, caressing or fondling by any person of:
 - (A) The genitals of a human;
 - (B) The pubic area of a human; or
 - (C) The uncovered female nipple and areola.
 - (3) Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

12-2-6. Zoning.

It shall be unlawful for any Sexually Oriented Business to do business at any location within the City not zoned for such business. Sexually Oriented Businesses licensed pursuant to this Ordinance shall only be allowed in areas zoned for their use(1) in Title 15 of the Revised Ordinances of Sandy City. They shall not be permitted as a home occupation.

12-2-7. Business License Required.

It shall be unlawful for any person to operate a Sexually Oriented Business, as specified below, without first obtaining a Sexually Oriented Business license. The business license shall specify the type of business for which it is obtained.

12-2-8. Business Categories; Single License.

- (a) It is unlawful for any business premises to operate or be licensed for more than one category of Sexually Oriented Business, except that a business may have a license for both Out-Call Services and Nude and Semi-nude Dancing Agency on the same premises.

(b) The categories of Sexually Oriented Businesses are:

- (1) Out-Call Services.
- (2) Adult Businesses.
- (3) Nude Entertainment Businesses.
- (4) Nude and Semi-Nude Dancing Agency.

12-2-9. Employee license.

It is unlawful for any Sexually Oriented Business to employ, or for any individual to be employed by a Sexually Oriented Business in the capacity of a Sexually Oriented Business Employee unless that employee first obtains a Sexually Oriented Business Employee license.

12-2-10. Exemptions from license requirements.

The provisions of this ordinance shall not apply to any sex therapist or similar individual licensed by the State of Utah to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the State of Utah for activities in the classroom.

12-2-11. Legitimate artistic modeling.

- (a) The city does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar state protections. The city does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of subsection 12-2-22, a licensed Out-Call employee may appear in a state of nudity before a customer or patron providing that a written contract for such appearance was entered into between the customer or patron and the employee and signed by both the customer or patron and the employee at least twenty-four hours before the nude appearance. All of the other applicable provisions of this chapter shall still apply to such nude appearance.
- (b) In the event of a contract for nude modeling or appearance signed more than forty-eight hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:
 - (1) Appear nude or seminude in the presence of persons under the age of eighteen;
 - (2) Allow, offer or agree to any touching of the contracting party or other person by the individual appearing nude;
 - (3) Allow offer or agree to commit prostitution, solicitation of prostitution,

solicitation of a minor, or committing activities harmful to a minor;

- (4) Allow, offer, commit or agree to any sex act as validly defined by city ordinances or state statute;
- (5) Allow, offer, agree or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;
- (6) Allow, offer or agree for the individual appearing nude to be within five feet of any other person while performing or while nude or semi-nude.

12-2-12. License Application; Disclosure.

Before any applicant may be licensed to operate a Sexually Oriented Business or as a Sexually Oriented Business Employee pursuant to this ordinance, the applicant shall submit, on a form to be supplied by the Sandy City Business License Officer, the following:

- (a) The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name.
- (b) If the applicant is a corporation, partnership or limited partnership or individual or entity doing business under an assumed name the information required below for individual applicants shall be submitted for each partner and each principal of an applicant and for each officer, director and any shareholder (corporate or personal) of more than ten percent of the stock of any applicant. Any holding company, or any entity holding more than ten percent of an applicant, shall be considered an applicant for purposes of disclosure under this chapter.
 - (1) The shareholder disclosure requirements above shall only be applicable for Out-Call service licenses.
- (c) All corporations, partnerships or non-corporate entities included on the application shall also identify each individual authorized by the corporation, partnership or non-corporate entity to sign the checks for such corporation, partnership or non-corporate entity.
- (d) For all applicants or individuals the application must also state:
 - (1) any other names or aliases used by the individual;
 - (2) the age, date and place of birth;
 - (3) height;
 - (4) weight;
 - (5) color of hair;
 - (6) color of eyes;

- (7) present business address and telephone number;
 - (8) present residence and telephone number;
 - (9) Utah drivers license or identification number; and
 - (10) Social security number.
- (e) Acceptable written proof that any individual is at least 18 years of age or, in the case of employees to be employed in businesses where a different age is required, proof of the required age;
 - (f) Attached to the form as provided above, two color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by Sandy City Police Department. For persons not residing in Sandy City the photographs and fingerprints shall be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency.
 - (g) For any individual required to obtain a Sexually Oriented Business Employee license to perform out-call services, or as a Nude Entertainer, a certificate from the Salt Lake City-County Health Department, stating that the individual has, within 30 days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable disease;
 - (h) A statement of the business, occupation or employment history of the applicant for three years immediately preceding the date of the filing of the application;
 - (i) A statement detailing the license or permit history of the applicant for the five year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate has ever had a license, permit, or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended in this or any other county, city, state, or territory. In the event of any such denial, revocation or suspension, state the date, the name of issuing or denying jurisdiction and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
 - (j) All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual or entity subject to disclosure under this chapter for five years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense); stating the date, place, nature of each conviction and plea of nolo contendere and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing the court identifying case numbers or docket numbers. Application for

a Sexually Oriented Business or Employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

- (k) In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;
- (l) A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:
 - (1) the hours that the business or service will be open to the public and the methods of promoting the health and safety of employees and patrons and preventing them from engaging in illegal activity;
 - (2) the methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;
 - (3) the methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this ordinance or other statutes or ordinances;
 - (4) the methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

12-2-13. Changes in Information.

Any change in the information required to be submitted under this ordinance for either a Sexually Oriented Business license or Sexually Oriented Business Employee license shall be given, in writing, to the Business License Authority and the Police Department, within fourteen days after such change.

12-2-14. Transfer Limitations.

Sexually Oriented Business licenses granted under this chapter shall not be transferable. It is unlawful for a license held by an individual to be transferred. It shall be unlawful for a license held by a corporation, partnership or other non-corporate entity to transfer any part in

excess of 10% thereof, without filing a new application and obtaining prior City approval. If any transfer of the controlling interest in a business licensee occurs, the license is immediately null and void and the business shall not operate until a separate new license has been properly issued by the City as herein provided.

12-2-15. License Fees.

- (a) Each applicant for a Sexually Oriented Business license shall be required to pay regulatory license fee pursuant to the schedule established by resolution of the Sandy City Council, including:
 - (1) Yearly business regulatory license fees in the following categories:
 - (A) Adult businesses,
 - (B) Out-Call businesses,
 - (C) Nude and seminude dancing agencies and nude entertainment businesses;
 - (2) For each business applicant, an initial investigation fee for each applicant required to submit a separate disclosure application;
 - (3) Yearly sexually oriented business employee license fees in the following categories:
 - (A) Any employee providing Out-Call business services away from the premises of the Out-Call business,
 - (B) Adult business employees, Out-Call business employees requiring a license but not performing any services outside the licensed premises, nude entertainment business employees requiring a license but not individually providing nude entertainment services to patrons and employees of Nude and Semi-Nude Dancing Agencies requiring licenses but who are not performers,
 - (C) Employees of nude entertainment businesses personally providing nude entertainment to patrons,
 - (D) Professional dancers performing seminude;
- (b) Any individual applying for more than one license at the same time shall pay the higher of all applicable fees and an additional twenty dollars for each additional license requested.
- (c) These fees shall be in addition to the other licenses and fees required to do business in the City.

12-2-16. Cost Bond.

Each application for a Sexually Oriented Business License shall post with the City's Business License Officer a cash or corporate surety bond payable to Sandy City Corporation in

the amount of two thousand dollars. Any fines assessed against the business, officers or managers for violations of City ordinances shall be taken from this bond if not paid in cash within ten (10) days after notice of the fine unless an appeal is filed as provided by this chapter. In the event that funds are drawn against the cash or surety bond to pay such fines the bond shall be replenished to two thousand dollars within fifteen days of the date of notice of any draw against it.

12-2-17. Term of License and No Proration.

Sexually Oriented Business and Employee licenses issued pursuant to this ordinance shall be valid from the date of issuance through January 1st of each succeeding year. The license fees required under Section 12-2-15 above shall not be prorated for any portion of a year but shall be paid in full for whatever portion of the year the license is applied for.

12-2-18. Single Location and Name.

- (a) It is unlawful to conduct business under a license issued pursuant to this ordinance at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by said business shall require a separate license.
- (b) It is unlawful for any Sexually Oriented Business to do business under any name other than the business name specified in the application.

12-2-19. Display of License.

It is unlawful for any Sexually Oriented Business location within the boundaries of the City to fail to display the license granted pursuant to this ordinance in a prominent location within the business premises. It shall be unlawful for any individual licensed pursuant to this ordinance to fail to, at all times while engaged in licensed activities within the corporate boundaries of the city, carry their employee license on their person. If the individual is nude such license shall be visibly displayed within the same room as the employee is performing. When requested by police, City licensing or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the City.

12-2-20. License in Advertising.

It is unlawful for any advertisement by the Sexually Oriented Business or employee to fail to state that the business or employee is licensed by the City and shall include the City license number.

12-2-21. Issuance of License.

- (a) The City business license official shall approve the issuance of a license to an applicant within 30 days after receipt of an application, unless the official finds one or more of the following:

- (1) The applicant is under 18 years of age or any higher age, if the license sought requires a higher age;
 - (2) The applicant is overdue in payment to the City of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a Sexually Oriented Business;
 - (3) The applicant has failed to or falsely answered a material question or request for information as authorized by this chapter;
 - (4) The applicant has been convicted of a violation of a provision of this ordinance within two years immediately preceding the application; however, the fact that a conviction is being appealed shall have no effect on the denial;
 - (5) The premises to be used for the business have been disapproved by the Salt Lake City/County Health Department, the City Fire Department, the City Police Department, the City building officials, the City engineering officials or the City zoning officials as not being in compliance with applicable laws and ordinances of the City. If any of the foregoing reviewing agencies cannot complete their review within the thirty day approval or denial period the agency or department may obtain from the city business license official an extension of time for their review of no more than fifteen days. The total time for the city to approve or deny a license shall not exceed forty-five days from the receipt of an application. Businesses located outside of the corporate boundaries of the city, but requiring a license under this chapter, may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location;
- (A) Upon receipt of an application all departments required to review the application shall determine within seven days whether or not the application is incomplete in items needed for processing. Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete.
 - (B) The time for processing applications specified in this section shall begin to run from the receipt of a complete application.
 - (C) In the event that a license for nude entertainment, nude and semi-nude dancing agencies, adult businesses, or nude entertainment businesses, has not been disapproved within thirty days or the forty-five days allowed after an extension, the city shall issue the license pending completion of the City's review.
 - (D) Any license issued pursuant to subsection (3C) above may be revoked by the city pursuant to the revocation procedures of section 12-2-35 through 37 if the completed review determines that the license should have been

denied.

- (6) The license fees required by this chapter or by other ordinances have not been paid;
- (7) All applicable sales and use taxes have not been paid.
- (8) An applicant for the proposed business is in violation of or not in compliance with this ordinance.
- (9) An applicant has been convicted or pled nolo contendere to a crime:
 - (A) Involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire, compelling prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; public lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense; for which:
 - (i) Less than two years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five years, if the convictions are of two or more misdemeanors within the five years; or
 - (ii) Less than five years have elapsed from the date of conviction, if the offense is of a felony;
 - (B) The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.

12-2-22. General Regulations.

It is unlawful for any Sexually Oriented Business or Sexually Oriented Business Employee to:

- (a) Allow persons under the age of eighteen years, or the age of twenty-one years if required by applicable alcoholic beverage ordinance, on the licensed premises, except that in Adult Businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;
- (b) Allow, offer or agree to conduct any Out-Call business with persons under the age of eighteen years;
- (c) Allow, offer or agree to allow any alcohol being stored, used or consumed on or

in the licensed premises.

- (d) Allow the outside door to the premises to be locked while any customer is in the premises;
- (e) Allow, offer or agree to gambling on the licensed premises;
- (f) Allow, offer or agree to any Sexually Oriented Business Employee touching any patron or customer; except that Out-Call employees and customers may touch except that any touching of specified anatomical areas, whether or not clothed or unclothed, is prohibited;
- (g) Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- (h) Allow Sexually Oriented business employees to possess, use, sell or distribute controlled substances, while engaged in the activities of the business;
- (i) Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities harmful to a minor to occur on the licensed premises or, in the event of an Out-Call employee or business, the Out-Call employee committing, offering or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;
- (j) Allow, offer, commit or agree to any sex act as validly defined by Sandy City ordinances or state statute in the presence of any customer or patron;
- (k) Allow, offer or agree to any Out-Call employee appearing before any customer or patron in a state of nudity;
- (l) Allow, offer or agree to allow a patron or customer to masturbate in the presence of the Sexually Oriented business employee or on the premises of a Sexually Oriented business.
- (m) Not permit the Police Department or other City official to have access at all times to all premises licensed or applying for a license under this chapter, or to make periodic inspection of said premises whether the officer or official is in uniform or plain clothes.

12-2-23. Out-Call Services; Operation requirements.

It is unlawful for any business or employee providing Out-Call services contracted for in Sandy City, to fail to comply with the following requirements:

- (a) All businesses licensed to provide Out-Call services pursuant to this chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services

shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this section for a period not less than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract and pecuniary compensation paid.

- (b) All Out-Call Businesses licensed pursuant to this ordinance shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours Out-Call employees are working. The address and phone number of the licensed location shall appear and be included in all patron contracts and published advertisements. For Out-Call businesses which premises are licensed within the corporate limits of the City, private rooms or booths where the patron may meet with the Out-Call employee shall not be provided at the open office or any other location by the service, nor shall patrons meet Out-Call employees at the business premises.
- (c) Out-Call services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that Specified Sexual Activities would be performed by the Out-Call employee.

12-2-24. Adult Business, Interior Design.

- (a) In addition to the general requirements of disclosure for a Sexually Oriented Business, any applicant for a license as an Adult Business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business shall conform to the following:
 - (1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms;
 - (2) Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person be allowed in the restroom per stall and only one person in any stall at a time and requiring that patrons shall not be allowed access to manager's station areas;
 - (3) For businesses which exclude minors from the entire premises all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded;
 - (4) The diagram required shall not necessarily be a professional engineer's or

architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures and ratings for illumination capacity;

- (b) It shall be the duty of licensee and licensee's employees to insure that the views from the manager's station of all areas specified in section (1) above remain unobstructed by any doors, walls, merchandise, display racks or any other materials, at all times that any patron is present in the premises, and to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted;
- (c) The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle measured at floor level. It shall be the duty of licensee and licensee's employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present in the premises.

12-2-25. Nude Entertainment Business; Interior Design.

- (a) It is unlawful for business premises licensed for Nude Entertainment to:
 - (1) Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an Adult Theater such items may be on the stage as part of a performance;
 - (2) Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors to be lockable from the inside;
 - (3) Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet high and six inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier;
 - (4) Adult theaters shall also require that the performance area shall be separated from the patrons by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high.

12-2-26. Nude Entertainment Businesses; Additional Location Restrictions.

It is unlawful for any business licensed for Nude Entertainment to be located within 500 feet of a business licensed for the sale or consumption of alcohol.

12-2-27. Defense to Prosecution.

It is a defense to prosecution or violation under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

- (a) By a proprietary school licensed by the State of Utah or a college, junior college or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

12-2-28. Semi-Nude Dancing in Licensed Business.

It is unlawful for any person to perform in a state of semi-nudity as a professional dancer, model, performer or otherwise on the premises of a business licensed as a sexually oriented business, either gratuitously or for compensation, unless that person is licensed as a Sexually Oriented Business Employee.

12-2-29. Nude and Semi-Nude Dancing Agency.

- (a) It is unlawful for any individual or entity to furnish, book or otherwise engage in the services of a professional dancer, model or performer to appear in a state of semi-nudity or nudity for pecuniary compensation in, or for, any nude entertainment business or adult theater licensed pursuant to this chapter unless such agency is licensed pursuant to this ordinance.
- (b) It is unlawful for any individual or entity to furnish, book or otherwise engage or permit any person to perform as a professional dancer, model or performer in a state of semi-nudity or nudity, either gratuitously or for compensation, in, or for, any business licensed pursuant to this chapter unless such person is licensed pursuant to this chapter.

12-2-30. Activities of Dancers.

It is unlawful for any professional dancer, model or performer, while performing in any business licensed pursuant to this chapter;

- (a) To touch in any manner any other person;
- (b) To throw any object or clothing off the stage area;
- (c) To accept any money, drink or any other object directly from any person;
- (d) To allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or
- (e) For the performer to place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity.

12-2-31. Activities of Patrons.

It is unlawful for any person, or any patron of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give to any such performer any drinks, money or object while such performer is performing; except that money may be placed on the stage which shall not be picked up by the performer except by hand.

12-2-32. Applicability of Regulations to Existing Businesses.

- (a) The provisions of this ordinance shall be applicable to all persons and businesses described herein whether the herein-described activities were established before or after the effective date of this chapter and regardless of whether such persons and businesses are currently licensed to do business in the City.
 - (1) All such persons and businesses requiring Out-Call Service licenses shall have forty-five days from the effective date of this chapter, or until their current license expires, whichever is first in time, to comply with the provisions of this chapter.
 - (2) All Nude and Semi-Nude Dancing Agency licenses shall have seventy-five days from the effective date of this chapter or until their current license must be renewed, whichever is first, to comply with the provisions of this chapter.
 - (3) All Nude Entertainment Businesses shall have one hundred five days from the effective date of this chapter or until their current license must be renewed, whichever is first, to comply with the provisions of this ordinance.
 - (4) All Adult Businesses shall have one hundred thirty-five days from the effective date of this chapter or until their current license must be renewed, whichever is first in time, to comply with the provisions of this chapter.
- (b) For the year 1991 all businesses required by this ordinance to be licensed as Sexually Oriented Businesses shall be credited against the fees required by this chapter with the regulatory license fees paid for the current 1991 license.

12-2-33. Violations-Penalties.

In addition to revocation or suspension of a license, as provided in this chapter, each violation of this chapter shall, upon citation by the City Business License Officer, require the licensee to pay a civil penalty in the amount of \$500.00. Such fines shall be deducted from the cost bond posted pursuant to this chapter, unless paid within ten days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this chapter, the violation of any provision of this ordinance shall be a class B misdemeanor. Each day of violation shall be considered a separate offense.

12-2-34. Injunction.

An entity or individual who operates or causes to be operated a Sexually Oriented Business, without a valid license, or who employs, or is employed as an employee of a Sexually Oriented Business or who operates such a business or functions as such an employee in violation of the provisions of this chapter, is subject to a suit for injunction in addition to the civil and criminal violations provided herein and any other remedy available at law or in equity.

12-2-35. Suspension or Revocation.

- (a) The City may issue a notice suspending or revoking a Sexually Oriented Business, or employee license granted under this chapter if a licensee, or an employee of the licensee has:
 - (1) Violated or is not in compliance with this chapter;
 - (2) Has refused to allow any inspection of the premises of the Sexually Oriented Business specifically authorized by this chapter, or by any other statute or ordinance;
 - (3) Has failed to replenish the cost bond as provided in this chapter; such a suspension shall extend until the bond has been replenished;
 - (4) A licensee or employee gave materially false or misleading information in obtaining the license;
 - (5) A licensee or an employee knowingly operated the Sexually Oriented Business or worked under the Employee license during the period when the business licensee or employee licensee's license was suspended;
 - (6) A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed.
 - (7) On two or more occasions within a twelve month period, a person or persons committed an offense in or on, or solicited for on the licensed premises, or an Out-Call employee solicited or committed on or off the premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the Sexually Oriented Business at the time the offenses were committed;
 - (8) A licensee is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the Sexually Oriented Business.
- (b) Suspension or revocation shall take effect within ten days of the issuance of notice unless an appeal is filed as provided by this chapter.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

12-2-36. Effect of Revocation.

When a license issued pursuant to this ordinance is revoked, the revocation shall continue for one year from its effective date and the licensee shall not be issued a Sexually Oriented Business or Employee license for one year from the date of such revocation.

12-2-37. Appeal.

- (a) If the license is denied or approved with qualifications, or if a notice of suspension, revocation, or citation of a civil fine is imposed the applicant or licensee may file an appeal with the Business License Officer.
- (b) Filing of an appeal must be within ten days of the date of service of the notice of any denial, qualified approval, suspension, revocation or civil fine. Upon receiving the notice of such appeal the Business Licensing Officer shall schedule a hearing before a designated hearing officer within twenty days of the date of the appeal unless such time shall be extended for good cause.
- (c) The hearing officer shall hold a public hearing on the record and take such facts and evidence as necessary to determine whether the denial, qualified approval, suspension, revocation or civil fine was proper under the law.
- (d) The burden of proof shall be on the City.
- (e) After the hearing, the hearing officer shall have seven working days, unless extended for good cause, in which to render findings of fact, conclusions of law and recommended decision to the Mayor.
- (f) Either party may object to the recommendation of the hearing officer by filing the party's objection and reasons, in writing, to the Mayor within seven days following the recommendation. In the event the hearing officer recommends upholding a suspension or revocation, the license shall be immediately suspended and shall remain suspended until any subsequent appeal is decided. If no objections are received within the seven days, the Mayor may immediately adopt the recommendation of the hearing officer.
- (g) If objections are received, the Mayor shall have ten working days to consider such objections before issuing the Mayor's final decision. The Mayor may, in the Mayor's discretion, take additional evidence or require written memorandum on issues of fact or law. The standard by which the Mayor shall review the decision of the hearing officer is whether substantial evidence exists in the record to support the hearing officer's recommendation.
- (h) An applicant aggrieved(2) by the Mayor's decision shall have judicial review of such decision pursuant to Rule 65B Utah Rules of Civil Procedure, or any other applicable statute or rule providing for such review.

12-2-38. Amendment.

It is hereby declared that none of the provisions contained in this chapter shall vest any rights in any person, unincorporated association, corporation, partnership or other legal entity and may be amended by the City Council at any time.

12-2-39. Severability.

In the event that any provision of this ordinance is declared invalid for any reason, the remaining provisions shall remain in effect.

Chapter 3 PORNOGRAPHY AND OBSCENITY

12-3-1. Definitions.

For the purpose of this part:

- (a) "Material" means anything printed or written on any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.
- (b) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming.
- (c) "Distribute" means to transfer possession of materials whether with or without consideration.
- (d) "Knowingly" means an awareness, whether actual or constructive, of the character of material or of a performance. A person has constructive knowledge if a reasonable inspection under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent.
- (e) "Exhibit" means to show.
- (f) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering, or the showing of a female breast with less than an opaque covering, or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- (g) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast whether alone or between members of the same or opposite sex or between humans or animals in an act of apparent or actual sexual stimulation or gratification.
- (h) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
- (i) "Minor" means any person less than eighteen years of age.

- (j) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse when it:
 - (1) Taken as a whole, appeals to the prurient interest of sex in minors;
 - (2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (3) Taken as a whole, does not have serious value for minors. Serious value includes only serious literary, artistic, political or scientific value for minors.
- (k) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this act has occurred, is occurring, or will occur.
- (l) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.
- (m) "City" shall mean Sandy City Corporation.

12-3-2. Pornographic Material or Performance -- Expert Not Required.

- (a) Any material or performance is pornographic if:
 - (1) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;
 - (2) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion; and
 - (3) Taken as a whole it does not have serious literary, artistic, political or scientific value.
- (b) In prosecutions under this part, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political or scientific value.
- (c) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

12-3-3. Distributing Pornographic Material.

- (a) A person is guilty of distributing pornographic material when he knowingly:
- (1) Sends or brings any pornographic material into the City with intent to distribute or exhibit it to others; or
 - (2) Prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others; or
 - (3) Distributes or offers to distribute, exhibits or offers to exhibit, any pornographic material to others; or
 - (4) Writes, creates, or solicits the publication or advertising of pornographic material; or
 - (5) Promotes the distribution or exhibition of material which he represents to be pornographic; or
 - (6) Presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion thereof which makes it pornographic.

Each distribution of pornographic material, as defined in this subsection

- (a) is a separate offense under this section. A separate offense shall be regarded as having been committed for each day's exhibition of any pornographic motion picture film and for each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.
- (b) Each separate offense under this section is a misdemeanor punishable by a minimum mandatory fine of not less than \$100 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration without suspension of sentence in any way, for a term of not less than seven (7) days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-4. Inducing Acceptance of Pornographic Material.

- (a) A person is guilty of inducing acceptance of pornographic material when he knowingly:
- (1) Requires or demands a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or
 - (2) Denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept

pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.

- (b) A violation of this section is a misdemeanor punishable by a fine of not less than \$200 and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-5. Dealing in Material Harmful to a Minor.

- (a) A person is guilty of dealing in harmful material when, knowing that a person is a minor, or having failed to exercise reasonable in ascertaining the proper age of a minor, he:
 - (1) Knowingly distributes or offers to distribute, exhibits or offers to exhibit, any harmful material to a minor; or
 - (2) Produces, presents or directs any performance before a minor, harmful to minors, or participates in any performance before a minor, harmful to minors; or
 - (3) Pretends to be the parent or legal guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful material.
- (b) Each separate offense under this section is a misdemeanor punishable by a minimum mandatory fine of not less than \$200 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than fourteen (14) days, notwithstanding any provision of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-6. Use of Real Property by Tenant or Occupant -- Voiding of Lease -- Allowance of Such Use by Owner or Lessor.

- (a) If a tenant or occupant of real property uses the property for an activity for which he or his employee is convicted under any provision of this part, the conviction makes void the lease or other title under which he holds at the option of the fee owner or any intermediate lessor; and ten (10) days after the fee owner or any immediate lessor gives notice in writing to the tenant or occupant that he is exercising the option, the right of possession to the property reverts in the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant, or his employee.
- (b) It shall be unlawful for a fee owner or intermediate lessor of real property to knowingly allow this property to be used for the purpose of distributing or exhibiting pornographic materials, or for pornographic performances, by a tenant or occupant if the tenant or occupant, or his employee, has been convicted under

any provision of this part and all avenues of direct appeal from the conviction have been exhausted or abandoned.

- (1) "Allow" under this subsection (b) means a failure to exercise the option in subsection (a) within ten (10) days after the fee owner or lessor receives notice in writing from the City Attorney that the property is being used for a purpose prohibited by this subsection (b).
- (2) A willful violation of this subsection (b) is a misdemeanor and any fine assessed, if not paid within thirty (30) days after judgment, shall become a lien upon the property.
- (c) Any tenant or occupant who receives a notice in writing that the fee owner or intermediate lessor is exercising the option provided by subsection (a) and who does not quit the premises within ten (10) days after the giving of that notice is guilty of a misdemeanor.

12-3-7. Affirmative Defenses.

- (a) It is an affirmative defense to prosecution under this part that the distribution of pornographic material was restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.
- (b) It is not a defense to prosecution under this part that the actor was a motion picture projectionist, usher, ticket-taker, bookstore employee or otherwise was required to violate any provision of this part incident to his employment.

12-3-8. Injunctive Relief -- Jurisdiction -- Consent to Sued --Service of Process.

- (a) The Circuit Court shall have full power, authority and jurisdiction, upon application by the City Attorney, to issue any and all proper restraining orders, preliminary and permanent injunctions, and any other writs and processes appropriate and lawful to carry out and enforce the provisions of this part. No restraining order or injunction, however, shall issue except upon notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues commencing within three (3) days after filing of any answer to the complaint and a decision shall be rendered by the Court within two (2) days after the conclusion of the trial. If a final order or judgment of injunction is entered against the person sought to be enjoined, this final order or judgment shall contain a provision directing the person to surrender to the Chief of Police of Sandy City any pornographic material in his possession which is subject to the injunction; and the Police Chief shall be directed to seize and destroy this material.
- (b) Any person not qualified to do business in the City who sends or brings any pornographic material into the City with the intent to distribute or exhibit it to

others in this City thereby consents that he may be sued in any proceedings commenced under this section and therefor appoints the City Recorder to be the agent upon whom may be served all legal process against that person. Service of process shall be made by serving a copy of same upon the City Recorder or by filing the copy in his office, together with payment of a fee of \$2; and this service shall be sufficient service upon the defendant if:

- (1) Notice of the service and a copy of the process are within ten (10) days thereafter sent by mail by the prosecuting attorney to the defendant at the address of the defendant that appears on any material exhibited or distributed and if no address appears, then the last known address of the defendant; and
 - (2) The prosecuting attorney's affidavit of compliance with the provisions of this subsection are attached to the summons. The City Recorder shall keep a record of all the process served upon him under this section, showing the day and hour of the service. Nothing in this subsection shall be construed to limit the operation of Rule 17(e) of the Utah Rules of Civil Procedure.
- (c) This section shall not be construed in any way to limit the Circuit Court in the exercise of its jurisdiction under any other provision of law.

12-3-9. Search and Seizure -- Affidavit -- Issuance of Warrant -- Hearing upon Claim that Material Seized not Pornographic -- Procedures Cumulative.

- (a) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic shall be attached to the affidavit for search warrant so as to afford the magistrate the opportunity to examine this material.
- (b) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized, if attached or by examination of the affidavit describing the material, or by such other manner or means that he deems necessary, whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.
- (c) In the event that a search warrant is issued and material alleged to be pornographic is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within ten (10) days after the date of the seizure, alleging that the material is not pornographic. The magistrate shall set a hearing within seven (7) days after the filing of this notice, or at such other time as the claimant might agree. At this hearing, evidence may

be presented as to whether there is probable cause to believe the material seized is pornographic, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic. A decision as to whether there is probable cause to believe the seized material is pornographic shall be rendered by the court within two (2) days after the conclusion of the hearing. If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic, then the material shall be returned to the person or persons from whom it was seized. If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the Court shall allow the film to be copied at the claimant's expense pending the hearing.

- (d) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it shall not be returned.
- (e) Procedures under this section for the seizure of allegedly pornographic material shall be cumulative of all other lawful means of obtaining evidence as provided by the laws of this State. Nothing contained in this section shall prevent the obtaining of allegedly pornographic material by purchase, subpoena duces tecum, or under proceedings as authorized by this act or by other provisions of law of the State of Utah.

12-3-10. Corporate Defenders -- Summons -- Subpoena Duces Tecum.

The attendance in court of a corporation for purposes of commencing or prosecuting a criminal action against it under this part may be accomplished by the issuance and service of a summons. A summons shall be issued by a magistrate if he finds probable cause that material in the possession of the corporation against which the summons is sought is pornographic, which finding shall be upon affidavit describing with specificity the material alleged to be pornographic or in such other manner or means the magistrate deems necessary. Where practical, the material alleged to be pornographic shall be attached to the affidavit so as to afford the magistrate the opportunity to examine this material. The summons must be served upon the corporation by delivery of it to an officer, director, managing or general agent, or cashier or assistant cashier thereof. The production of material alleged to be pornographic in any proceedings under this part against a corporation may be compelled by the issuance of a service of a subpoena duces tecum. It is not the intent of this section and service of a subpoena duces tecum. It is not the intent of this section to prohibit or limit the use of a subpoena duces tecum in proceedings against natural persons under this part.

12-3-11. Conspiracy an Offense. Punishment.

- (a) A conspiracy of two or more persons to commit any offense proscribed by this part is a misdemeanor punishable for each separate offense by a minimum mandatory fine of not less than \$100 and by imprisonment, without suspension of sentence in any way, for a term of not less than thirty (30) days, notwithstanding

any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

- (b) Where a defendant has already been convicted once under this section, each separate further offense is a misdemeanor punishable by a minimum mandatory fine of not less than \$250 and by imprisonment, without suspension of sentence in any way, for a term of not less than thirty (30) days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-12. Licensing.

- (a) Pursuant to its authority to license and regulate occupations and activities as set forth in the Utah Code Annotated, and in accord with its duty to declare and abate nuisances, and protect the public morals, public health and public welfare, the City hereby enacts the following provisions:
 - (1) It is hereby declared that the willful or knowing public exhibition or commercial exploitation of that which is pornographic is a serious public nuisance, and such conduct on the part of any person constitutes an offense of moral turpitude.
 - (2) Any person or other entity licensed to serve or deal with the public manifesting such unlawful conduct shall have all business licenses suspended for a period of not less than six (6) months, and said license shall not be reinstated until an thorough character investigation of the person is conducted (the expense thereof to be borne by the licensee up to two hundred ninety-nine dollars (\$299.00) and upon the posting of a bond in the amount of one thousand dollars (\$1,000) to insure against further such activity.
 - (3) This licensing shall be enforced by a civil action or proceeding, but the adjudication of a conviction under the criminal portions of this article dealing with lewdness and obscenity or conviction under analogous State statutes dealing with obscenity and pornography shall be conclusively presumed to constitute a violation of this section and shall lead to the mandatory immediate suspension of said license in accord with the above provisions.

12-3-13. Omission to Stop Illegal Use of Land.

- (a) The omission of a landlord or landowner to take reasonable action to stop the illegal use of his land for prostitution, lewdness, the keeping of immoral places for the exhibition or commercial exploitation of that which is pornographic and remove the wrongdoer from the premises, after receiving official notification of said illegal conduct in writing from the County Attorney or City Attorney, and where there is probable cause for the landlord to believe said criminal conduct does exist, is a crime and nuisance proscribable as set forth herein.
- (b) "Reasonable action" in this section includes the prompt termination of tenancy and lawful ejectment of the wrongdoer from the premises.
- (c) All civil or criminal fines, damages, costs or penalties levied against the landlord, landowner or wrongdoer for such illegal activities on the premises after a violation of this section shall be a lien upon the land and property.

12-3-14. Separability Clause.

If any clause, sentence, or part of this chapter or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be

invalid, the judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, persons or circumstances, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

12-3-15. Penalty.

Any violation of the provisions of this chapter, unless otherwise specifically provided, shall be deemed a class B misdemeanor.

Endnotes

1 (Popup - Popup)

The Tenth Circuit Court of Appeals upheld a city ordinance aimed at curbing the secondary effects of sex oriented businesses by limiting the location of such businesses to industrial zones. Employing Renton, the court upheld requirements imposing SOB separation from churches, schools, parks, etc. The court upheld this regulation as constitutional although there was no "on-site" disruption or activity. The law's regulation controlled SOB business' offices, even though the actual explicit behavior occurred off-site. The court favored a reasonable relationship to the harmful secondary effects as shown by studies, even though those studies dealt with on-site viewing of sexually explicit materials. The court observed that the city may control a perceived risk through regulation without the need to wait for secondary effects to materialize. L.L.C. d/b/a Christie's v. Aurora, Colorado, 66 U.S.L.W. 1505 (CA 10 1998).

2 (Popup - Popup)

Qualifications for applicant "aggrieved" and scope of review discussed in S&G, Inc. v. Morgan, 797 P.2d 1086 (Utah 1990).